

Attn: Business, computer writers

INTERNET DOMAIN NAME RESELLERS WARNED AGAINST MISLEADING, DECEPTIVE CONDUCT

Suppliers of domain name renewal services have been warned not to mislead or deceive customers by Australian Competition and Consumer Commission Chairman, Professor Allan Fels.

The warning follows orders by consent against Melbourne-based Internet Name Protection Pty Ltd (formerly trading as Internet Name Group or 'ING') and its directors Mr Sasha Sudakov and Mr Mark Spektor, and a former employee of Internet Name Group.

The orders, made by Justice Ryan, settle Federal Court proceedings brought by the ACCC early this year against Internet Name Group (now in administration and subject to a deed of company arrangement), Mr Sudakov, Mr Spektor and the former employee.

Internet Name Group had sent unsolicited invoices to small businesses throughout Australia seeking payment for domain name services including the registration and renewal of domain names.

The orders include injunctions restraining Internet Name Group from engaging in conduct that is misleading or deceptive, or likely to mislead or deceive, in connection with Internet domain names.

"This outcome sends a warning to all businesses which send false invoices to potential customers implying that an amount of money is due when that business has had no previous dealings with the customer", Professor Fels said. "These businesses place themselves at risk of being the subject of an ACCC investigation and possible litigation".

Internet Name Group will display an advertisement on its website, correcting its misrepresentations. In addition, the Federal Court has made declarations that Internet Name Group:

- falsely represented that services were of a particular standard, quality, value or grade in contravention of section 53(aa) of the *Trade Practices Act 1974*;
- falsely represented that services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have in contravention of section 53(c) of the Act;
- falsely represented that Internet Name Group has a sponsorship, approval or affiliation it does not have in contravention of section 53(d) of the Act;
- made a false or misleading representation with respect to the price of services in contravention of section 53(e) of the Act;
- made a false or misleading representation concerning the need for services in contravention of s.53(f) of the Act;
- made a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy in contravention of s.53(g) of the Act;
- engaged in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services in contravention of s.55A of the Act;
- accepted payment for services where, at the time of the acceptance, Internet Name Group intended to supply services materially different from the services in respect of which the payment was accepted in contravention of s.58(a)(ii) of the Act;
- accepted payment for services where, at the time of the acceptance, there were reasonable grounds, of which Internet Name Group was aware or ought reasonably to have been aware, for believing that it would not be able to supply the services within a reasonable time or at all in contravention of s.58(b) of the Act; and
- asserted a right to payment from a person for unsolicited services when it did not have reasonable cause to believe that it had a right to payment in contravention of s.64 of the Act.

Mr Sudakov and Mr Spektor have been restrained by injunction from being knowingly concerned in or a party to any conduct of a similar nature in the future. A breach of those orders would put ING and Mr Sudakov and Mr Spektor at risk of proceedings for contempt of court. Both have also agreed, at their own expense, to undertake trade practices compliance training focussing specifically on the consumer protection provisions of the Act.

A former Internet Name Group employee, Mr Craig Missell, also a party to the ACCC's action, agreed to injunctions by consent relating to a part of Internet Name Group's conduct, and to undertake trade practices compliance training.

In August this year, Internet Name Group entered voluntary administration. On 8 October 2002, creditors in the administration voted that Internet Name Group enter a Deed of Company Arrangement, allowing the former directors to regain their directorship of Internet Name Group, while the deed administrator retained control of the company's assets for the benefit of its creditors. Negotiation of the settlement of the ACCC's Federal Court proceeding also involved an undertaking by the directors of ING to table a deed of company arrangement, with a view to maximising the possible cent per dollar refund for creditors. A majority of creditors were consumers that were worst affected by Internet Name Group's conduct - those who had paid for a service but did not receive any service at all.

"Internet Name Group had little funds, and the administrator was unable to recover enough money to allow for refunds to a wider class of affected consumers, including those who mistakenly paid Internet Name Group to renew their domain names, believing them to be their true provider", Professor Fels said. "The ACCC handles numerous complaints from small business operators who receive dubious invoices for domain name services by mail, facsimile and e-mail. The ACCC took its action against Internet Name Group to protect small business operators and to increase trade practices awareness in the domain name industry.

"Being a relatively new industry with much consumer confusion, the ACCC remains vigilant in the e-commerce area and applying the Act to the operations of its participants. Confidence in domain name licence registration and renewal services is critical to the development of e-commerce. As competition develops in this sector, business and individuals need to make sure that they understand how the registration system works and how to choose the offer that best suits their needs.

"A number of companies are now offering domain name renewal services in the com.au domain space, which may lead to confusion among consumers. Suppliers of domain name renewal services are warned not to mislead customers as to their need to renew their domain name licence with a particular supplier, as such conduct may breach the Act".

Further information

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**See also ACCC Calls for Caution in Domain Name Renewals 31 1 2001 MR 15/01*